

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FIREMAN'S FUND INSURANCE CO.,  
as Subrogee of CHARLES MAYS,

Plaintiff,

vs.

**NOTICE OF REMOVAL**

UNITED VAN LINES, LLC,

Defendant.

-----X

To the Judges of the United States District Court for the Southern District of New York:

The Notice of Removal on behalf of defendant, UNITED VAN LINES, LLC ("UNITED"), respectfully alleges the following:

1. On or about September 24, 2007, plaintiff commenced an action in the Civil Court of the City of New York, County of New York entitled "Fireman's Fund Insurance Co., as Subrogee of Charlie Mays v. United Van Lines, LLC," Index No. 52639/07. A copy of plaintiff's Summons with Endorsed Complaint filed on or about September 24, 2007 is annexed hereto as Exhibit "A."

2. Service of process was received by the New York Secretary of State on behalf of UNITED on October 5, 2007. A copy of the New York Secretary of State's notice of service is annexed hereto as Exhibit "B."

3. This Notice of Removal is filed within thirty (30) days of UNITED's receipt of the Summons with Endorsed Complaint by service or otherwise and is, therefore, timely filed

pursuant to 28 U.S.C. §1446(b).

4. As recited in the Complaint (Exhibit "A"), this matter concerns a civil action for alleged breach of an interstate Bill of Lading agreement between plaintiff's subrogor and UNITED to transport a shipment of household goods from San Leandro, California to Frederick, Maryland allegedly resulting in loss and/or damage to the goods in the amount of \$15,443.80.

5. At all times relevant, UNITED was an interstate motor carrier of household goods operating under the authority of the ICC Termination Act of 1995 ("ICCTA") and the United States Department of Transportation, Surface Transportation Board ("STB").

6. UNITED is sued herein under the laws of the United States, specifically the ICCTA and Code of Federal Regulations ("C.F.R.") and federal law exclusively governs plaintiff's claims and alleged damages.

7. UNITED is and was at all relevant times an interstate motor carrier authorized to perform transportation of goods in interstate commerce pursuant to its Bill of Lading and Tariffs published pursuant to 49 U.S.C. §13702.

8. UNITED's Bill of Lading terms and conditions, Tariff provisions, the ICCTA and C.F.R. rules and regulations govern this action in its entirety.

9. Title 28 U.S.C. §1441(b) provides, in relevant part:

Any civil action of which the district courts have original jurisdiction founded on a claim or rights arising under the ... laws of the United States shall be removable without regard to the citizenship or residence of the parties....

10. The Endorsed Complaint (Exhibit "A") alleges defendant's negligence, breach of bailment and breach of an interstate Bill of Lading agreement governed exclusively by 49

U.S.C. §14706 and the amount in controversy is \$15,443.80 which exceeds \$10,000.00 within the meaning of 28 U.S.C. §1337(a).

11. As plaintiff's claims are founded on UNITED's interstate Bill of Lading, published Tariffs, the ICCTA and C.F.R., plaintiff must rely entirely on federal law for any remedy.

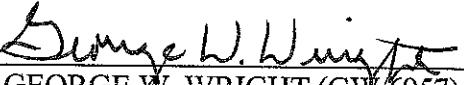
12. Based on the relevant facts and applicable law, this action arises under the laws of the United States within the meaning of 28 U.S.C. §§ 1331 and 1337.

13. Written notice of the filing of the within Notice of Removal has been served by mail on plaintiff's counsel and a copy of this Notice of Removal has been forwarded by mail to the Clerk of the Civil Court of the City of New York, County of New York.

WHEREFORE, defendant, UNITED VAN LINES, LLC, prays that this action be removed from the Civil Court of the City of New York, County of New York, to this Honorable Court.

Dated: New York, New York  
October 23, 2007

GEORGE W. WRIGHT & ASSOCIATES, LLC

BY:   
GEORGE W. WRIGHT (GW/6957)  
Attorneys for Defendant  
88 Pine Street  
New York, NY 10005-1801  
(212) 483-8266

TO: BADIAK & WILL, LLP  
Attorneys for Plaintiff  
106 Third Street  
Mineola, NY 11501-4404  
(516) 877-2225

**EXHIBIT "A"**



52639/DT

SEP 24 2007

Summons

CIVIL COURT OF THE CITY OF NEW YORK,  
COUNTY OF NEW YORKFIREMAN'S FUND INSURANCE CO., as subrogee of  
CHARLES MAYS,

against

UNITED VAN LINES, LLC

Plaintiff(s)

Defendant(s)

## Plaintiff's Residence

Address: One Chase Manhattan Plaza  
37th Floor  
New York, New York 10005

The basis of the venue designated is:

Plaintiff's Place of Business

To the above named defendant(s)

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of New York at the office of the said court at 111 Centre Street in the County of New York City and State of New York, within the time provided by law as noted below and to file your answer to the endorsed summons ~~xx-xxxx-xxxxxx~~ with the Clerk: upon your failure to answer, judgment will be taken against you for the sum of \$15,443.80 with interest thereon from 19th day of April 2006 ~~xx~~ together with the costs of this action.

Dated, September 18, 2007

BADIAK & WILL, LLP  
Attorney(s) for Plaintiff

## Defendant's Address:

c/o Jan Robey Alonzo, General Counsel  
Unigroup  
Premier Drive  
Fenton, Missouri 63026Post Office Address and Telephone Number  
106 Third Street  
Mineola, New York 11501-4404  
(516) 877-2225

NOTE: The law provides that: (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

\*If the cause of action is for money only and a formal complaint is not attached to the summons, strike the words "annexed complaint". If a formal complaint is attached to the summons, strike the words "endorsed summons".

## ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

Action to recover damages for breach of contract, breach of bailment and negligence by defendant common carrier, in connection with the transport of household goods, moving from San Leandro, California to Frederick, Maryland, on board defendant's vehicle per bill of lading # U164-1158-6, dated 4/19/2006, whereby said shipment sustained damage and loss while in the care, custody and control of said defendant, its agents or servants. Plaintiff was in no way contributorily negligent. Plaintiff brings this action in its own right, and on behalf of all interested parties who may appear.

Amount: \$15,443.80, plus interest and costs.

BADIAK & WILL, LLP  
07-H-164-RB/AKBADIAK & WILL, LLP  
Attorney(s) for Plaintiff(s)  
Ref.: 07-E-164-RB/AK

AFFIDAVIT OF SERVICE  
SS. The undersigned, being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at  
That on \_\_\_\_\_ at \_\_\_\_\_ M., at \_\_\_\_\_

deponent served the within summons, and complaint on \_\_\_\_\_

INDIVIDUAL  by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

CORPORATION  a \_\_\_\_\_ corporation, by delivering thereat a true copy of each to \_\_\_\_\_ personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be \_\_\_\_\_

ADULTAGE PERSON  by delivering thereat a true copy of each to \_\_\_\_\_ a person of suitable age and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.

FFIXING TO DOOR, ETC.  4.  by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there

MAILING TO RESIDENCE  
USE WITH 3 OR 4  
5A.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at \_\_\_\_\_ and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

MAILING TO BUSINESS  
USE WITH 3 OR 4  
5B.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's actual place of business, at \_\_\_\_\_

in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

Male  White Skin  Black Hair  White Hair  14-20 Yrs.  Under 5'  Under 100 Lbs.  
 Female  Black Skin  Brown Hair  Balding  21-35 Yrs.  5'0"-5'3"  100-130 Lbs.  
  Yellow Skin  Blonde Hair  Mustache  36-50 Yrs.  5'4"-5'8"  131-160 Lbs.  
  Brown Skin  Gray Hair  Beard  51-65 Yrs.  5'9"-6'0"  161-200 Lbs.  
  Red Skin  Red Hair  Glasses  Over 65 Yrs.  Over 6'  Over 200 Lbs.

Other identifying features: \_\_\_\_\_

Sworn to before me on \_\_\_\_\_

Index No. \_\_\_\_\_  
Civil Court of the City of New York  
County of New York  
FIREMAN'S FUND INSURANCE CO., as subrogee of  
CHARLES MAXS.

Plaintiff(s)

Defendant(s)

against

UNITED VAN LINES, LLC,

Summons

Action not based

upon a Consumer Credit Transaction

19

Print name beneath signature.

LICENSE NO. \_\_\_\_\_

BAIDLAK & WILL, LLP  
Attorney(s) for Plaintiff(s)

Post Office Address

106 Third Street, Suite  
Mineola, New York 11501-4404  
(516) 877-2225

## **EXHIBIT “B”**

Party Served:

UNITED VAN LINES, LLC

Plaintiff/Petitioner:

FIREMAN'S FUND INSURANCE CO.

JAN ROBEY ALONZO GENERAL COUNSEL  
UNIGROUP INC  
1 PREMIER DR  
FENTON, MO 63026

Dear Sir/Madam:

Enclosed herewith is a legal document which was served upon the Secretary of State on 10/05/2007 pursuant to SECTION 303 OF THE LIMITED LIABILITY COMPANY LAW. This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,  
Division of Corporations

**AFFIDAVIT OF SERVICE**

STATE OF NEW JERSEY      )  
                                  ) ss.  
COUNTY OF BERGEN      )

GEORGE W. WRIGHT, being duly sworn, deposes and says, that deponent is not a party to this action and is over 18 years of age. That on October 23, 2007 deponent served the within NOTICE OF REMOVAL upon the following party:

BADIAK & WILL, LLP  
Attorneys for Plaintiff  
106 Third Street  
Mineola, NY 11501-4404  
(516) 877-2225

by depositing said copy enclosed in a postpaid, properly addressed wrapper, into an official depository under the exclusive care and custody of FedEx.

George W. Wright  
GEORGE W. WRIGHT

Sworn to before me this  
23rd day of October, 2007

Doris Soran  
Notary Public

DORIS SORAN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Dec. 3, 2011